THE HON'BLE MR JUSTICE RAMESH RANGANATHAN

WRIT PETITION No.21051 of 1998

Dated 03-10-2007

Between:
N.Laxmi Narayana.

..... PETITIONER

AND

The Chairman, Industrial Tribunal-I, Hyderabad & another.

.....RESPONDENTS

THE HON'BLE MR JUSTICE RAMESH RANGANATHAN

WRIT PETITION No.21051 of 1998

O R D E R:

The present Writ Petition is filed, aggrieved by the award of the Industrial Tribunal-I, Hyderabad, in I.D.No.61 of 1992 dated 23-12-1995, in holding that the action of the Management-Dena Bank in dismissing Sri N.Lakshminarayan, clerk-cum-cashier, with effect from 05-02-1991 was justified and that the petitioner was not entitled to any relief.

The Central Government, by order dated 01-09-1990 under Section 10(1)(d) & 2(A) of the Industrial Disputes Act, referred the following dispute for adjudication before the Industrial Tribunal:

> "Whether the action of the management of Dena Bank in dismissing Sri N.Laxminarayana, clerk-cum-cashier, with effect from 05-02-1991 without giving notice, was justified? If not, to what relief, he is entitled?

Facts, in brief, are that Sri N.Laxminarayana, the Vice-President of Dena Bank Employees Union, Nizamabad had several deposit accounts in his name and in the name of his family members. He was charged of gross negligence, to have misappropriated bank's money and to have committed fraud on the bank and in that process, on 07-03-1979, to have submitted an application to the bank for issuing Samruddhi Deposit Receipt (for short 'SDR') for Rs.12,000/- in his name and in the name of his family members, to have prepared two debit vouchers and two credit vouchers, the two debit vouchers for Rs.4,000/- in Savings Bank Account No.128 and Rs.10,802.47ps. in Savings Bank Account No.333 and to have transferred a sum of Rs.12,000/- from the accounts towards SDR. On the very same day i.e. on 07-03-1979, the SDR bearing No.066331 for Rs.12,000/- was issued in his name

and in the name of his wife. However, he failed to make debit entries for Rs.4,000/- in S.B.A/c.No.128 and Rs.10,802.47ps/- in S.B.A/c.No.333 and credit entry of Rs.4,000/- in S.B.A/c.No.333. Subsequently on 21-03-1979, the workman Sri Laxminarayana, prepared another set of vouchers by debiting SDR A/c for Rs.12,000/- and crediting FDR A/c. for the same amount. He also availed an overdraft limit of Rs.10,800/- as against the said FDR for Rs.12,000/- and also received credit of Rs.1,183.57/-, being the interest on the said fixed deposit from 04-04-1979 to 10-03-1980. The workman prematurely encashed the FDR and took a fresh FDR and it is only after a lapse of five years i.e. on 28-02-1984, that the non-posting of the debit entries of Rs.4,000/- and Rs.10,802.47 in S.B.A/cNo.128 and S.B.A/c.No.333 respectively were detected and, soon thereafter, Sri Laxminarayana immediately repaid the amount of Rs.11,986.46 ps. to the bank.

The sum and substance of the charge is that the workman, Sri Laxminarayana without having sufficient funds in his account prepared two false debit vouchers for Rs.4,000/- and Rs.10,802.47 ps. and a credit voucher for Rs.12,000/- towards SDR, did not enter the two debit vouchers and thereby facilitated a Samrudhi Deposit Receipt being issued in his favour. He, subsequently, transferred the proceeds from SDR to FDR, and obtained an overdraft of Rs.10,000/- and also received interest of Rs.1,183.57/-. It is only after the misappropriation was detected did he repay the amount. In effect, the petitioner had unauthorizedly utilized bank's money for a sum of Rs.10,802.47 ps.

The enquiry officer relied on the exhibits marked before it (Exs.W.1 to W.3 marked by the workman and Exs.M.1 to M.10 marked by the employer) to hold that Sri Laxminarayana had himself prepared the credit vouchers and with a paltry sum of Rs.1197.53 ps. he had successfully secured SDR for Rs.12,000/- because of non-posting of debit entries. The enquiry officer noted that M.W.1, the

Officer of the respondent-bank, had spoken of all these fraudulent transactions, to the preparation of vouchers and the non-posting of entries in his S.B.Account by the workman.

Before the Tribunal, the validity of the domestic enquiry was put in issue. However, by its order dated 27-03-1995, the Tribunal held that the domestic enquiry was just and proper. The Tribunal held that Sri Laxminarayana, by merely depositing Rs.1197.53 ps. had successfully secured SDR for Rs.12,000/- while he was working as clerk-cum-cashier, that he had cancelled the SDR on 21-03-1979 and converted it into FDR and had availed overdraft thereon of Rs.10,000/- and had enjoyed interest of Rs.1,183.57 ps for the period from

04-04-1979 to 10-03-1980, that he had unauthorisedly utilized the bank's money of Rs.10,802.47 ps. with interest thereon and had thereby committed fraud on the bank. The Tribunal rejected the petitioner's contention that the charge sheet was vague. The Tribunal also rejected the petitioner's contention that the enquiry officer had acted in a biased manner. It also rejected the petitioner's contention that he was not responsible for making entries. The Tribunal held that the petitioner was working as clerk-cum-cashier on 17-03-1979 in the absence of a regular cashier and it was, therefore, his duty to record regular entries in the records and a perusal of the entries in S.B.Account Nos.128 & 333 revealed that the petitioner was fully aware of non-posting of vouchers and entries into his account. With regards the delay of five years in filing the charge sheet, from the date the misconduct came into light in 1984, the Tribunal held that mere delay cannot be a ground to absolve an employee of proved misconduct. It also rejected the contention that the workman was victimized because of his union activities. The Tribunal held that the petitioner had kept quiet for a period of about five years and it was only on the misconduct being detected, did he

make good the amount by depositing the amount in the bank. The Tribunal held that the evidence on record conclusively proved the misconduct alleged against the petitioner, that the conclusions drawn by the enquiry officer were correct and that the enquiry officer had rightly held the charge as proved. The Tribunal rejected the contention of the enquiry officer that the findings were perverse.

With regards the quantum of punishment, the Tribunal held that the bank was a nationalized bank and was a custodian and watch-dog of public money, that the bank business was mainly based on trust and confidence, that the workman, as a cashier, was dealing with public money and on account of proved misconduct, the public had lost confidence reposed on him as a bank employee, that the workman is not worthy of the post which he occupied in the bank as he has utilized public money for his selfish ends and, therefore, he was not entitled to continue in the services of the bank. The Tribunal held that the punishment imposed on the petitioner was not disproportionate to the proved misconduct. The Reference was rejected and the action of the management in dismissing Sri Laxminarayana was held to be justified.

The contention urged before this Court by
Sri G.Vidyasagar, learned counsel for the petitioner, with regards violation of principles of natural justice and the delay in issuing the charge sheet has already been dealt with by the Tribunal in detail. The reasons assigned by the Tribunal in rejecting such contentions are valid and do not necessitate interference in certiorari proceedings under Article 226 of the Constitution of India. For such serious acts of misconduct, of misappropriation of the public funds by playing fraud on the bank, the workman cannot be absolved of the charge merely on account of the fact that the charge sheet was filed five years after the misconduct was detected. Nothing has been shown as to how the petitioner was prejudiced on account of the delay in this regard. There is no need to examine the petitioner's

contention with regards the violation of principles of natural justice, as the order of the Tribunal upholding the validity of the domestic enquiry is not under challenge in the present proceedings. In any event, the petitioner has not shown as to how he was prejudiced by any manner of infraction of the applicable rules relating to conducting a domestic enquiry.

Sri G.Vidyasagar, learned counsel for the petitioner, would contend that since the petitioner had already returned the amount, the punishment of dismissal from service is grossly disproportionate to the charge held established. I am afraid I cannot agree. The charge held established against the petitioner is of his having played fraud on the bank and to have misappropriated public funds. The mere fact that he had returned the money, on the misconduct being detected, cannot absolve him of such grave and serious acts of misconduct. The only punishment which could have been imposed for such serious charges of misappropriation of public funds is dismissal from service. Viewed form any angle, the challenge to the award is wholly misconceived.

The Writ Petition fails and is, accordingly, dismissed. However, in the circumstances, without costs.

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03-10-2007

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